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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,411	07/16/2003	Richard Craig Estey	55632.107561	9611
27526 7590 11/16/2007 BLACKWELL SANDERS LLP 4801 Main Street Suite 1000 KANSAS CITY, MO 64112			EXAMINER RENDON, CHRISTIAN E	
			ART UNIT 3714	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/620,411	Applicant(s) ESTEY, RICHARD CRAIG	
	Examiner Christian E. Rendón	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Response to Amendment***

This office action is in response to the amendment filed October 10, 2007 in which applicant has amended claim 31 and responded to the claim rejections. Claims 1-30 are still pending.

***Claim Rejections - 35 USC § 103***

**Claims 1-2 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boushy et al. (US 5,761,647) in view of Bentz ("Affiliate Marketing: does It Work? Should You Get An Affiliate Program? Is It Worth It?") and in further view of Vonage Affiliate Program ([http://web.archive.org/web/20030603160954/vonage.com/features\\_affiliates.php](http://web.archive.org/web/20030603160954/vonage.com/features_affiliates.php)).**

1. Computer systems inherently contain a computer readable storage medium for storing operating systems, computer programs and other data structures like databases. Regarding claims 1 and 21, Boushy teaches a player tracking system (PTS) (Boushy: Abstract) comprising of a database (Boushy: col. 4, lines 48-50) operated by a central computer system (Boushy: col. 2, lines 9 & 24). The PTS system stores player profiles in its database after establishing that the player meets a predetermined criterion set by the casino, like the player's level of profitability (Boushy: col. 4, lines 60-65). The system tracks and records each player's gaming and non-gaming activity (Boushy: col. 2, line 7), which is collected by the PTS database and associated with each player's profile information. After a gambling establishment ('casino A') creates a profile for a player, the data is shared through a centralized database on a network with other affiliated establishments for the purpose of offering cross-property incentives (Boushy: col. 2, lines 10-17). Therefore when an establishment ('casino B') receives a new or recruited player that has a profile in the database, the system sends 'casino B' the profile that was created by 'casino A' or the sponsor of the player (Boushy: col. 9, lines 22-25), which [the sponsoring casino] is also recorded in the profile (Boushy: col. 3, lines 18-19). The PTS also offers ongoing benefits typically in the form of "comps" to the player based on the gaming activity of

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the player (Boushy: col. 3, line 1). Furthermore, Boushy provides the complimentary gifts and benefits like a complimentary room (Boushy: col. 8, line 53) in order to provide a more enjoyable experience and to provide the player's with an incentive to join the system in exchange the casino's ability to monitor and track their play of gambling games. The PTS also incorporates a marketing system (Boushy: Fig 3) to provide data to all of the affiliated establishments who will develop and monitor (Boushy: col. 2, lines 17-21) cross-property incentives programs and comps that are personalized to the player (Boushy: col. 2, lines 57-60).

2. Boushy discloses a relationship between a player and an affiliate of casinos. A player benefits from this relationship since they still have the chance to 'try out' a different establishment while still collecting points towards various 'comp' benefits into a central pool. The affiliate of casinos benefits from the relationship by sharing within their 'circle' loyal 'high rollers.' In other words, one casino recruiting a current customer, who has a history of spending lots of cash towards collecting 'comp' benefits, for another casino. Boushy fails to disclose any specifics towards rewarding a relationship between a casino player sponsoring or recruiting another individual for a casino.

3. The method disclosed by the applicant is a commonly known practice in marketing known as a multi-tiered affiliate advertising and marketing program or a "Refer-A-Friend" program. In regards to affiliate programs Bentz teaches the benefits of how these systems can improve the revenue and success of a product (Bentz: "what makes an affiliate program so powerful?"). These systems typically begin with a company (i.e. a casino) who has a product (i.e. casino gameplay) asking their affiliate (*i.e. sponsored player*) to refer customers (*i.e. recruited player*) to them as a form of free advertising. The affiliate is paid or rewarded a percentage of the profits or commissions for every purchase the referred customer makes since the customer's account is associated with the affiliate's account (Bentz: "For the Business/Supplier" & "For the Affiliate").

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4. "Casino A and B' are sharing their customers and the responsibility of awarding these players comps in hopes of increasing their profits by encouraging the person to play more often at multiple locations (Boushy: col. 12; lines 18-24). This system is an affiliate marketing practice just as much as the one disclosed by Bentz, therefore one of ordinary skill would combine both affiliate marketing programs as a large scale scheme to increase the casino's number one concern, profit. The combined system increase a player's options for accumulating comp points by receiving some for successfully recruiting another person who was not a member at one of the casino establishments (Boushy: col. 2, lines 17-21 & 57-60). Resulting in an increase of casino customers and the spending of money on playing, eating and staying at the any one of the casinos. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to implement a multi-tiered affiliate program into the advertising system of Boushy to be used in conjunction with the player tracking system. Furthermore, the sponsoring casino, 'Casino A' and a 'sponsoring player' are viewed as equivalent since both are benefiting entities that gain from the actions of another party, 'recruited player's' gameplay at 'Casino B' in the form of comps for the 'sponsoring player' and future money for 'Casino A'.

5. Furthermore based on the applicant's remarks, it appears the applicant has a hard time believe that the "refer-a-friend" concept can be incorporated into a variety of market shares. Therefore the Examiner has included this extra reference, Vonage Affiliate Program to further drive the point that it is a well-known practice and successful practice in business to promote new or old products through current customers. The Vonage Affiliate Program offers current customers money and a month of free service for every successfully recruited person to the service. The system also tracks the number of successful recruits the current customers has accomplished. Therefore the applicant's claims towards the concept of affiliation programs carries little patentable weight.

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6. Regarding claim 2, the Examiner takes OFFICIAL NOTICE that manual bookkeeping and player tracking are antiquated variants of player tracking system are old and well known in the art at the time of the invention.

**Claims 3-20, 22-29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boushy et al. (US 5,761,647) and Bentz as applied to claims above, and further in view of Vonage Affiliate Program and Messer et al. (US 2004/00111381 A1).**

7. Regarding claims 3-7, 9-10, 22-24 and 26-27, Boushy et al. teaches a player tracking system that incorporates the use of monitoring and tracking a players operation in a casino. Additionally, Boushy teaches the use of a central patron database (Boushy: col. 4, line 48) that enters and monitors new and existing player accounts. These accounts are updated with information relating to a player's gaming activity and monitored to see if they are eligible for complimentary gifts or benefits (Boushy: col. 2, lines 65-67; col. 3, line 1). Furthermore, the system is linked to the advertising and marketing divisions of the casino however is silent with regards to different embodiments of marketing/advertising methods in the marketing/advertising arts. Bentz and Vonage teach the basics of a multi-tiered affiliate method and teach the advantages of incorporating such a method to improve the revenue of a product (*i.e. casino gameplay*) or customer base. However, Boushy, Bentz and Vonage are silent with regard to the operations that a system might implement when using an affiliate program that tracks the hierarchical relationship between a sponsor and its referrals in a computer system (Messer: par. 4, lines 7-9).

8. Messer et al. is an analogous computer system patent that teaches the implementation of an affiliate program into a communication network. Messer establishes a hierarchical relationship between the affiliates or sponsored players and the users or the recruited players (Messer: par. 23, lines 5-7; par. 24, line 3). The affiliates provide links to Merchant sites on relevant websites for Internet users to click, creating traffic and a possible sale on the Merchant site. A fellow Merchant site

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can also play the role of sponsor for another Merchant site (Messer: par. 34; par. 29, lines 3-5). In other words, a new member or player can become a sponsoring member. Once a referred user makes a purchase or any profitable activity, the sponsor receives a commission for that referral (Messer: par. 22, lines 11-12). Additionally, an incentive is made to new vendors who enter into the multi-tiered affiliate network (*i.e.: the commissions are generated as added into the network*) (see [0038-0054]).

9. Regarding claims 12-13 and 29, Messer teaches a method wherein the commission (*i.e. complimentary benefits*) are associated with qualified referrals (*i.e. gaming activity*) participated in by direct and indirect recruits beyond a minimum volume, wherein a recruit's gaming activity volume is a running sum of the value of all qualified referrals (*i.e. gaming activity*) (see paragraph [0004-0006], [0022]).

10. Regarding claims 14-16 and 30, Messer teaches populating the vendors (*i.e. sponsoring member*) of an existing vendors profile with information identifying a sponsoring vendor (*i.e. member*). Additionally, the system is adaptable to change the sponsoring member to identify a different member (see [0007-0009]).

11. Messer also teaches that one would be motivated to use this type of multi-tier affiliated system to allow for an enhanced product access to users. Therefore it would have been obvious one of ordinary skill in the art at the time of the invention incorporate the system taught by Messer with Boushy, Bentz and Vonage as a means to incorporate a PTS that implements a mutli-tiered affiliate player system.

12. Regarding claims 11 and 28, Boushy teaches a qualified gaming activity is based on at least one of the following: the sum of all wagers placed by a player, the sum of all winnings associated with all wagers placed by a player, a configurable combination of a player's wagers and winnings, the net winnings associated with a player, and other qualified spending by a player (see col. 9: lines 4-67).

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13. Regarding claims 8 and 25, Boushy teaches a method wherein the offered complimentary benefits for each level are selectable and based on a mathematical formula (see *col. 9: lines 50-col. 10: lines 18*).
14. Regarding claim 17, Boushy teaches a method of a player tracking system that operates in the environment of a single casino (see *CMS [234(1-4)] of Fig. 5 and the related description thereof*).
15. Regarding claim 18, Boushy teaches a method of a player tracking system that is extended to accommodate multiple locations of a gaming organization (see *'patron database' [212] and 'casino management systems (CMS)[234] of Fig. 3 and the related description thereof, col. 4: lines 30-45*).
16. Regarding claim 19, Boushy teaches a method of a player tracking system that is extended to accommodate multiple locations of organizations affiliated with a gaming organization (see *Fig. 5 and the related description thereof*).
17. Regarding claim 20, Boushy teaches a method of a player tracking operating within a gaming organization which includes a casino, a race track, a dog racing track, a horse racing track, a sports betting organization, a bingo hall, and a lottery as well as a bar, a retail store, and other facilities where legalized gaming is permitted (see *'CMS [234], LMS [238], SMS [262] of Fig. 3 and the related description thereof*).

### ***Response to Arguments***

18. Applicant's arguments filed October 10, 2007 have been fully considered but they are not persuasive. Firstly, all interpretations are made within the scope of casinos and affiliate programs. As clearly stated above and in the previous "Response to Arguments", a product sale is considered equivalent to gaming activity since the main product of a casino is gameplay, hence the reason for creating attractive and complying games as a means to increase gameplay. The main prior art reference teaches tracking a player's activity and storing any information regarding the player

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therefore the inclusion of another data structure that stores a player's successful recruits is not a far stretch nor difficult since Bentz and Vonage Affiliate Program teach this common feature.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Walker (US 6,193,608 B1)** – Method for Motivating Players to Return to a Casino Using Premiums.

**Cumbers (US 6,142,876)** – Player Tracking and Identification System.

**Fertitta, III et al. (US 6,302,793 B1)** – Multi-property Player Tracking System.

**Roser (US 2002/0082076 A1)** – Systems and Methods wherein Multiple Accounts are Associated with a Player.

**Rowe et al. (US 2002/0039921 A1)** – Method and Apparatus for Monitoring Player Loss in a Gaming Environment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian E. Rendón whose telephone number is 571-272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christian E Rendón  
Examiner  
Art Unit 3714

  
XUAN M. THAI  
SUPERVISORY PATENT EXAMINER

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